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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,683	09/19/2001	Clint H. O'Conner	016295.0690	1165

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EXAMINER

HARRELL, ROBERT B

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/955,683

Applicant(s)

O'CONNER ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20010919</u> . | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

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1. Claims 1-25 are presented for examination.
2. With respect to any non-English submitted Prior Art references submitted by the applicant on September 19, 2001, only figures and any related English text were considered.
3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The claims are more directed to ***Predicting Demand Requirements To Control A Plurality Of Server Power Supplies By A Power Management Unit.***
4. This application should be amended to make reference to related United States Patent Application 09/955,684.
5. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims. Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
6. The non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornam, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993), In re Berg 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998), 195 F.3d 1322, 1326, 52 USPQ2d (Fed. Cir. 1999), Eli Lilly CAFC on petition for rehearing En Banc (58 USPQ2d 1869).
7. A timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321 (c) may be used to overcome an actual or provisional rejection based on a non statutory based double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 C.F.R. 3.73(b).
8. Claims 1-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of United States Patent Application 09/955,684. Although the conflicting claims are not identical, they are not patentably distinct from each other because the Patent Application claims define an obvious variation of this United States Patent Application claims. Specifically, 09/955,684 covered a defined invention

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including, starting with 09/955,684's first claim, a computer system comprising (line 1): a plurality of processing resources operable to process data (line 2); a plurality of power supplies associated with the processing resources, the power supplies operable to supply power to the processing resources (lines 3-4). While the first claim of 09/955,684 did not specifically recite power management engine associated with the power supplies, the power management engine operable to adjust the power supplies to optimize power consumption, the recited management engine operable to scale the number of the processing resources in relation to a plurality of demand requirements in 09/955,684 did so, in light of the specification, by adjusting the power supplies to optimize power consumption in the manner as currently claimed and thus was an obvious various, and/or equivalent, to that claimed in this application.

9. Also, claim 10 of this application is a subset of, and thus anticipates, claim 1 of 09/955,684.

10. Per the other claims, such match up in obvious various in the following mapping with the claims of this application listed, on each line, first followed by an arrow and the corresponding claim(s) of 09/955,684:

1→1,10  
2→9,10  
3→9,10  
4→5  
5→6  
6→13  
7→4  
8→11  
9→12  
10→1  
11→13  
12→15 (12 is a subset of 15 and thus anticipates claim 15)  
13→16,25  
14→16,25  
15→17,18  
16→18  
17→17  
18→22  
19→23 in light of the specification  
20→17,18  
21→17,18  
22→27  
23→28  
24→23 in light of the specification  
25→30

11. The following is a quotation of the second paragraph of 35 U.S.C 112:

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**The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

12. Claims 1-25 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the resource management engine"--claim 6 (lines 1-2);
- b) "the number"—claim 10 (lines 4-5), claim 12 (line 9), claims 15-20 (lines 1-2);
- c) "the optimal"—claim 14 (line 4);
- d) "the demand requirements"—claim 23 (line 3)[\*]"future demand requirements"?].

13. As to 12 (a-d) above, these are but a few examples of numerous cases where clear antecedent bases are lacking and not an exhausting recital. Any other term(s) or phrase(s) overlooked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent bases are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent bases are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent bases are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

14. The phrase "associated with" (i.e., claim 1 as an example) does not clearly indicate a physical interconnection among the claimed elements as does the phrase "connected to". Therefore, the related interconnection among the claimed elements cannot be clearly ascertained from the claims.

15. Per claim 2, it cannot be clearly ascertained if "supply supply" is in error on the last line of claim 2.

16. Per claim 22, in light of page 14 (lines 21-23) of this application's specification, lines 10-11 and lines 12-13 of claim 22 appear redundant. Thus it cannot be clearly ascertained if the claimed "scaling" involves the claimed "adjusting the power supplies in advance". In other words, the cited sections of the specification would indicate that "scaling" and "adjusting" are the same acts and thus the same act appears to have been claimed twice with in claim 22.

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17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

**A person shall be entitled to a patent unless -**

**(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;**

18. Claims 1-25 are rejected under 35 U.S.C. 102 (e) as being anticipated by Fung (US 6,859,882 B2)

19. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.


20. Per claim 1, Fung taught a computer system (e.g., see figure 2 as an example) comprising:  
a) a plurality of processing resources (the several Server Module 54 of figure 2 and also figure 9 as examples) operable to process data (as implied by "CPU" of figure 2 for example);  
b) a plurality of power supplies (e.g., see figure 2 (56), related wires of "Backplane" and voltage generators (416-2) of figure 9 and/or voltage regulators of figure 11 (see way lower simi-right just off the backplane connector) as examples)) associated with the processing resources, the power supplies operable to supply power to the processing resources (e.g., see Abstract); and,  
c) a power management engine (e.g., see figure 12 (108a) as examples) associated with the power supplies, the power management engine operable to adjust the power supplies to optimize power consumption (e.g., see Title, Abstract, col. 4 (lines 26-44), and col. 28 (line 26-et seq.) as examples).

21. Per claims 2 and 3, such would be any storage of power usage information (i.e., which of the servers are on or off) for supply information or any storage of demands as covered in col. 8 (lines 38-49) and col. 11 (line 66-et seq.) as examples.

22. Per claims 4 and 5, see Absrtact.

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23. Per claim 6, see col. 29 (line 65) to col. 30 (line 11) "cycle" in col. 30 (line 1).
24. Per claim 7, no clear definition for "enterprise" was given in this application other than the general use of the word and thus Fung's system was an enterprise in the general term of the word such as Internet service companies or enterprise as covered in col. 3 (line 12-14).
25. Per claims 8 and 9, see col. 6 (lines 44-57).
26. Per claim 10, such would be that which controlled and managed the "workload", as covered in the Abstract for example, of the totality of the system covered by Fung.
27. Per claim 11, see col. 30 (lines 30-43).
28. Per claims 12-25, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above. However, as for predicting future demand requirements, see col. 32 (line 31) and col. 67 (line 62-et seq. (these are not claims for this applied reference which actually start in col. 98 (line 4))).
29. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).
30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.
31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (571) 272-3896. The fax phone number for all papers is (703) 872-9306.
32. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

  
ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142